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EDMUND G. BROWN JR., GOVERNOR

Honorable Rob Bonta  
Member of the Assembly  
State Capitol, Room 2148  
Sacramento, CA 95814

Dear Assemblymember Bonta:

Our office has reviewed AB 1479 as amended July 18, 2017. On the basis of our attached analysis of available information, we regret that we must oppose your legislation. If you feel that we may have overlooked factors that may be important in evaluating your legislation, please call me at 445-8610 and we will arrange any assistance necessary.

Sincerely,

MICHAEL COHEN  
Department Director

Attachment

## DEPARTMENT OF FINANCE BILL ANALYSIS

**AMENDMENT DATE:** 07/18/2017  
**POSITION:** Oppose

**BILL NUMBER:** AB 1479  
**AUTHOR:** Bonta, Rob

### **BILL SUMMARY:** Public records: custodian of records: civil penalties.

This bill requires that, until January 1, 2023, all state and local agencies designate a person or office to act as the agency's custodian of records and be responsible for responding to any request made pursuant to the California Public Records Act (PRA) and any inquiry from the public about a decision by the agency to deny a request for public records. This bill also provides that, until January 1, 2023, a court may assess a civil penalty against an agency in an amount not less than \$1,000, and not more than \$5,000, which shall be awarded to the requester, if the court finds by a preponderance of the evidence that the agency, knowingly and willfully without substantial justification: (1) failed to respond to a request for records as required pursuant to the PRA; (2) improperly withheld a public record from a member of the public that was clearly subject to public disclosure; (3) unreasonably delayed providing the contents of a record subject to disclosure in whole or in part; (4) improperly assessed a fee upon a requester that exceeded the direct cost of duplication; or (5) otherwise did not act in good faith to comply with the PRA.

### **FISCAL SUMMARY**

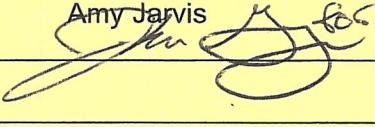
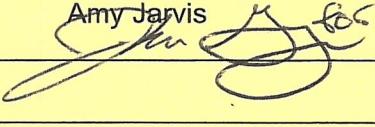
This bill would create unknown, but likely significant General Fund costs to the state. Anticipated costs of this bill include increased staff and/or training for 154 state agencies—as well as all of California's local agencies—who will be required to appoint a custodian of records and pay civil penalties, courts costs, and attorney's fees if they are found to have violated the PRA. This bill could also create cost pressures by impacting court dockets with increased litigation. However, the trial courts are not funded on a workload basis and, to the extent there is additional litigation, there could be a delay in court services.

Additionally, we note that to the extent that this bill's provisions create additional workload and staffing needs for local entities, it could result in a reimbursable mandate.

### **COMMENTS**

The Department of Finance is opposed to this bill because it is likely to result in significant state costs and cost pressures. Additionally, it is unclear how this bill would make the PRA request process function faster or more efficiently.

Because court costs and attorney's fees can cost agencies as much as \$100,000 per case, this bill is unlikely to be impactful in terms of incentivizing agencies to comply with the PRA. For agencies that engage in practices that risk costing those agencies \$100,000 per violation, an additional \$1,000 to \$5,000 in civil penalties would do little to change their behavior. However, by creating a cause of action whereby plaintiffs can seek a direct pecuniary benefit, this bill increases the likelihood of frivolous PRA requests and lawsuits. The provision allowing for civil penalties could, in aggregate, become very costly for the state. It is also unclear what \$1,000 to \$5,000 in monetary damages would do to make plaintiffs whole, after they have already received a court order directing the release of the requested records and recouped all costs and fees.

<i>AK</i> Analyst/Principal (0212) M.Tollefson 	Date 8/7/17 	Assistant Program Budget Manager Amy Jarvis 	Date 8/18/17
Department Deputy Director <i>Orig. Signed By J.W.H. AUG 7 2017</i>			
Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
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**BILL ANALYSIS--(CONTINUED)****AUTHOR**

Bonta, Rob

**AMENDMENT DATE**

07/18/2017

AB 1479

**COMMENTS** (continued)

Agencies have experienced a significant increase in PRA requests in recent years. The City of Sacramento, for example, processed over 4,000 requests in 2016, compared with 1,800 requests in 2013. Agencies already straining to keep up with the growing number of requests would be further impacted by this bill.

Unlike states whose public records requests are cost neutral, California agencies can only recover the direct costs of duplicating a requested record. Therefore, an agency employee could spend hours or even days to find and produce a record, yet the agency can only recover the cost of the photocopy provided to the requester. Because PRA plaintiffs can file suit as soon as 11 days after a request is made, this bill creates unwarranted opportunity for bad actors to abuse the system, potentially wreaking havoc on both agencies and those requesters with legitimate purposes.

Finally, it is unclear what would be accomplished by forcing agencies to designate a custodian of records. While this provision would likely necessitate additional staff and new hiring, it is unlikely to streamline the PRA process. Agencies typically have various departments, which are each uniquely qualified to answer requests within their own areas. Therefore, it would be impracticable for one staff member to respond to the wide-array of requests an agency receives. Designating a single point of contact for all requests could lead to additional steps in the request process and cause further, potentially costly, delays. Without further justification, the state should allow agencies to process PRA requests in the manner that best suits the unique nature of each agency.

Existing law allows any person to institute proceedings for injunctive relief, declarative relief, or a writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or receive a copy of any public record or class of public records under the PRA. Existing law also allows plaintiffs to recover court costs and reasonable attorney's fees when they prevail in PRA litigation.

According to the author's office, by increasing the consequences for public entities that unreasonably delay responding to requests or producing records, this bill strengthens public access laws and provides important incentives to curtail such abuses.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP	(Fiscal Impact by Fiscal Year) (Dollars in Thousands)				Fund Code
			98	FC	2017-2018 FC	2018-2019 FC	
9901/Var Depts	SO	No	C		0-25,000 C	0-50,000 C	0-50,000 0001